

### **REMARKS**

Claims 1-6 are pending. The Office Action rejects claims 1-6 on nonstatutory obviousness-type double patenting grounds over several co-pending applications, rejects claims 1-6 under 35 U.S.C. §102(e) over Gerace (U.S. Patent No. 5,848,396) and over Angles (U.S. Patent No. 5,933,811). These rejections are respectfully traversed.

### **Information Disclosure Statement**

Applicants thank the Examiner for considering the references cited on pages 1-6 of the IDS filed October 17, 2006. The Examiner asserts that pages 7-18 of the IDS fail to comply with 37 C.F.R. §1.98(a)(2) for failing to provide copies of foreign patent documents, non-patent literature, and/or other information. However, as explained in the IDS, copies of these references are not required since they have been cited to or by the Office in an earlier application relied on for an earlier effective filing date under 35 U.S.C. §120. 37 C.F.R. §1.98(d). Specifically, copies of the references were provided at least in U.S. Reissue Application 09/577,798, which is a reissue of U.S. Patent No. 5,948,061, Application No. 08/738,634, to which the present application claims priority. It is respectfully requested that the Examiner consider these references as cited on pages 7-18 of the IDS. Applicants note that these documents are readily available in the electronic file wrapper of the reissue application.

### **Double Patenting Rejections**

Claims 1-6 stand provisionally rejected on nonstatutory obviousness-type double patenting grounds over co-pending U.S. Application Nos. 10/798,340, 10/798,342, and/or 10/937,341. However, the present application and the cited applications are divisional applications of a common parent, U.S. Application No. 10/254,923, resulting from a restriction requirement. Therefore, the cited applications are not proper double patenting references, and no terminal disclaimers are required. *See* 35 U.S.C. §121; M.P.E.P. §804 (Part II), §804.01. Withdrawal of the rejections is respectfully requested.

### **35 U.S.C. §102 Rejections**

The invention defined by the present claims was reduced to actual practice prior to at least April 26, 1996. This date is established by the declarations under 37 C.F.R. § 1.131 submitted by the named inventors of the present application in U.S. App. No. 10/254,923, and in U.S. Reissue App. No. 09/577,798, which is a reissue of U.S. Patent No. 5,948,061 (originally U.S. App. No. 08/738,634). The present application claims priority to both the '923 application and the '634 application. Copies of these declarations are provided for the Examiner's convenience. Applicants respectfully note that the establishment of conception and due diligence is not required for inventors swearing behind a date established by an actual reduction to practice.

Claims 1-6 were rejected under §102 as anticipated by Gerace and Angles. Angles was filed on August 20, 1996; Gerace was filed on April 26, 1996. Thus, neither reference was filed prior to invention of the claimed subject matter by Applicants. The cited references are not prior art to the present application, and withdrawal of the rejections is respectfully requested.

### **Conclusion**

Based on the above remarks, Applicants believe the claims are in condition for allowance. The Commissioner is authorized to charge any fees or credit any overpayment to the deposit account of Kenyon & Kenyon LLP, Deposit Account No. 11-0600.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

Respectfully submitted,

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